

# **RULES OF ORGANIZATION AND PROCEDURE OF THE MARION SUPERIOR COURT, CRIMINAL DIVISION**

## **RULE 1. FILING, ASSIGNMENT AND TRANSFER OF CASES**

### **Random Assignment**

- (a) <sup>1</sup>All criminal cases filed in Marion County in the Superior Courts shall be assigned to an individual courtroom on a random basis. The random assignment rule for criminal cases does not apply to certain cases designated by the Court and Prosecutor as belonging in the:
- domestic violence courts; or
  - major felony and class D felony drug court; or
  - traffic court; or
  - those cases involved in case consolidation noted below.
- This rule strives for the equalization of caseload among all of the individual courtrooms.
- (b) <sup>2</sup>Cases from the “D” felony courts (F09, F15 and F18) will be transferred to the major felony courts (G01, G02, G03, G04, G05, and G06) at a sufficient number of cases per court per month to be in compliance with the Weighted Caseload Measures requirements of no more than .25 above or below the most recent county average as published by the State Court Administrator’s Office. All hearing will take place in the major felony courts.
- (c) All hearings for Major Felony cases will be conducted in the Major Felony Court. Any new filing for a major felony case shall be randomly assigned to one of the multiple courtrooms designated as Major Felony Courts (G01, G02, G03, G04, G05 and G06) with the exception of a major felony drug offense case, which shall be assigned to major felony drug court (G20).
- (d) Initial hearings for all Class D Felony Cases that are the result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court (F11). These cases shall be subsequently assigned on a random basis to one of the multiple courtrooms designated as Class D Felony Courts (F09, F15 and F18). The random assignment rule for criminal cases does not apply to D felony cases involving allegations of domestic violence or to Class D felony cases designated as drug court cases. Cases involving an allegation of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Class D felony drug cases shall be assigned to the D felony drug court (G14).
- (e) Initial hearings for cases involving Misdemeanor Cases that are a result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court, Court 11. These cases shall be assigned on a random basis to one of the multiple courtrooms designated as Misdemeanor

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<sup>1</sup> Rule 1(a) amended July 27, 1999.

<sup>2</sup> Rule 1(b) amended and ratified October 16, 2000, effective April 1, 2000

Courts (F07, F08, F10 and F19). Misdemeanor cases involving allegations of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Misdemeanors involving allegations of violations of traffic laws, with the exception of Operating a Vehicle While Intoxicated, shall be assigned to the Traffic Court (F13). Misdemeanors where the alleged offense occurred within the boundaries of the Community Court Project shall be assigned to the Community Court (F12).

- (f) If a case involving allegations of domestic violence parties to a civil protective order cases, the criminal cases shall be filed in the same courtroom as the civil protective order cases.

### **Case Consolidation<sup>3</sup>**

It shall be the policy of the Marion Superior Court, that wherever possible consistent with good case management principles, cases involving the same defendant shall be consolidated into one court for resolution of all of the pending cases.

- (a) **Murder, A, B and C Felony Cases (hereinafter “Major Felony case”)**

Any subsequently filed Major Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

Any subsequently filed D Felony or Misdemeanor Case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

In the event the defendant has an open D Felony or Misdemeanor case pending in any criminal court and is subsequently charged with a Major Felony case, the pending D Felony or Misdemeanor case shall be transferred to the Major Felony Court.

In the event the defendant has an open probation case pending in any criminal court and is subsequently charged with a Major Felony case, the probation case shall be transferred to the Major Felony Court, unless the probation case can be resolved without the resolution of the new Major Felony case.

“Pending” as defined herein means any existing Major Felony, D Felony or Misdemeanor case which is in pre-disposition status.

No classification of cases are exempt from consolidation under this subparagraph.

- (b) **D Felony Cases**

Any subsequently filed Misdemeanor or Class D Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest existing Class D Felony case is pending.

In the event the defendant has an open Misdemeanor case in any criminal court and is subsequently charged with a D Felony case, the Misdemeanor case shall be transferred to to the D Felony Court.

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<sup>3</sup> Rule 1 Case Consolidation effective July 1, 2003; amended December 28, 2004, effective March 1, 2005

In the event the defendant has an open probation case pending in any D Felony or Misdemeanor Court and is subsequently charged with a D Felony case, the probation case shall be transferred to the D Felony Court where the new case has been filed, unless the probation case can be resolved without the resloution of the new D Felony case.

“Pending” as defined herein means any existing Class D Felony or Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17 or cases that are linked with a co-defendant.

### **(c) Misdemeanor Cases**

Subject to the provisions of paragraphs (a) and (b) above, any subsequent Misdemeanor case filed against a defendant shall be assigned and/or transferred to the Court where the defendant’s oldest existing Misdemeanor case is pending with the exception that Court 13 (Traffic Court) shall not receive assignment or transfer of cases when Court 13 has the oldest pending case.

In the event the defendant has an open probation case pending in any Misdemeanor Court and is subsequently charged with a new Misdemeanor case, the probation case shall be transferred to the new Misdemeanor Court unless the probation case can be resolved without the resolution of the new Misdemeanor case.

Pending as defined herein means any existing Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17, or cases that are linked with co-defendants.

### **OTHER CONSIDERATIONS**

In the event that a case involves both felony and misdemeanor offenses, pursuant to Administrative Rule 1, the case shall be considered a Felony case for the application of this rule.

It shall be the responsibility of the Prosecutor’s Office Screening Department to provide a listing of all pending cases with the case filing documents to ensure that all case transfers can be made consistent with this rule.

The judge of each room of the criminal division, by appropriate order entered of record may transfer and re-assign to any other room of the criminal division any cause pending in that room subject to acceptance by the receiving court. Further the Presiding Judge of the Criminal Division or the Executive Committee may order the transfer of cases from one court to another if the Presiding Judge or the Executive Committee finds that a transfer and reassignment of cases in necessary to provide for the speedy and fair administration of justice.

All cases received by the criminal division on change of venue from outside Marion County shall be assigned to a room within the division on a random basis by the same method used to assign cases of original jurisdiction in Marion County.

When the State of Indiana dismisses a case and chooses to re-file that case, the case shall be re-filed in the court where the case was originally docketed.

All pleadings, petitions and motions shall be filed with the Clerk designated by the court at any time during filing hours established by the Clerk and the court and shall be accompanied by a proposed order. All orders submitted to the court shall be in sufficient number and shall be accompanied by postage paid envelopes addressed to each party or counsel of record. Service of orders on the Marion County Prosecutor and the Marion County Public Defender Agency may be through mailbox service established in each courtroom.

## **RULE 2. RECORDS**

The Clerk of the Marion County Circuit Court shall keep and maintain all records in accordance with Trial Rule 77. In addition the criminal division shall enter records of its proceedings and orders issued in the general division order book.

The Clerk of the Marion Circuit Court shall also maintain a grand jury order book in which each impaneling court shall enter all records of proceedings and orders issued pertaining to the regular or special grand jury.

## **RULE 3. GRAND JURY**

- (a) The judges assigned to preside in the respective rooms of the criminal division with felony jurisdiction shall be in charge of selection, receiving and properly recording indictments and reports of the grand jury, as well as carrying out all other judicial functions relative to the grand jury during the respective quarters to which they have been assigned.
- (b) Effective January 1, 1996, the grand jury shall be impaneled by the Judge of Criminal Division, Room I, for January, February, and March of 1996, as provided by law. Thereafter, the grand jury shall be impaneled in numerical sequence by quarters by each of the criminal courts designated to hear Class A, B, and C felonies. All indictments shall be returned to the impaneling court, who shall order the indictments filed pursuant to Rule 1.

## **RULE 4. SPECIAL GRAND JURY**

Special grand juries shall be impaneled pursuant to statute and all indictments returned ordered filed by the impaneling judge pursuant to Rule 1.

## **RULE 5. TRIAL RULES**

- (a) The judges of the Criminal Division shall from time to time convene to adopt rules of procedure and such other business of court as they may deem necessary, proper and advisable, all subject to the ratification of the Marion Superior Court in a general meeting.
- (b) The trial rules of procedure in each room of the criminal division shall be the same as provided for in the Indiana Rules of Trial Procedure and of Criminal Procedure as duly adopted by the Indiana Supreme Court, and as further provided by law.

## **RULE 6. APPEARANCE AND WITHDRAWAL OF COUNSEL**

- (a) Appearance of counsel in all cases shall be made without qualification and in writing in the form designated by Rules of the Indiana Supreme Court. Withdrawals shall be by permission of the court only, and upon written motion of the party wanting to withdraw, showing notification to the client. Upon entering an appearance, the attorney must become familiar with the Rules of the Criminal Division and rules of the court in which an appearance is entered.
- (b) Pro Se Appearance. A defendant wanting to legally represent himself at trial must direct such request to the court, in clear and unequivocal terms, at least three (3) days before date of trial. Otherwise, said request may be denied.

## **RULE 7. AUTOMATIC DISCOVERY**

### **1. GENERAL**

- (a) The court at initial hearing will automatically order the State to disclose and furnish all relevant items and information under this Rule to the defendant (s) within twenty (20) days from the date of the initial hearing, subject to Constitutional limitations and protective orders, and the defendant (s) to provide the State with discovery within forty-five (45) days of the initial hearing.
- (g) No written motion is required, except:
  - (1) To compel compliance under this Rule
  - (2) For additional discovery not covered under this Rule
  - (3) For a protective order
  - (4) For an extension of time
- (c) All discovery shall be completed by the omnibus date unless extended for good cause shown.

- (d) Although each side has a right to full discovery under this Rule, each side has a corresponding duty to seek out the discovery. Failure to do so may result in the waiver of this right.

## 2. STATE DISCLOSURE

- (a)<sup>4</sup> The State shall disclose the following material and information within its possession or control:

- (1) The names and last known addresses of persons whom the State intends to call as witnesses, with their relevant written or recorded statements. The State may refrain from providing a witness' address under this rule if the State in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness and the witness' immediate family. If the State does not disclose the witness' address for the reason stated under this rule then the State shall make the witness available for deposition or interview by defense counsel upon reasonable notice.

Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the court may take such action as inappropriate.

The Court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.

- (2) Any written, oral or recorded statements made by the accused or by a co-defendant, and a list of

witnesses to the making and acknowledgement of such statements.

- (3) A transcript of those portions of grand jury minutes containing testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

- (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

- (5) Any books, papers, documents, photographs, or tangible objects that the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.

- (6) Any record of prior criminal convictions that may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

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<sup>4</sup> Rule 7(2)a amended May 25, 1999.

- (b) The State shall disclose to defense counsel any material or information within its possession or control that tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore.
- (c) The State may perform these obligations in any manner mutually agreeable to the prosecutor and defense counsel.

### **3. DEFENDANT DISCLOSURE**

- (a)<sup>5</sup> Defendant's counsel shall furnish the State with the following material and information within his/her possession or control.
  - (1) Any defense that he/she intends to make at a hearing or trial.
  - (2) The names and last know addresses of persons whom the defense intends to call as witnesses, with their relevant written or recorded statements and any record of prior criminal convictions known to him/her. The defense may refrain from providing a witness' address under this rule if the defense in good faith believes the disclosure of the witness' address may jeopardize the safety of the witness and the witness' immediate family. If the defense does not disclose the witness' address for the reason stated under this rule then the defense shall make the witness available for deposition or interview by counsel for the State upon reasonable notice. Should there be a dispute among the parties concerning the disclosure of a witness' address, counsel shall meet and make a reasonable effort to resolve this dispute before seeking intervention from the court. The party seeking disclosure or a protective order under this rule shall include in the party's motion or request a statement showing that the attorney making the motion or request has made a reasonable effort to reach agreement with opposing counsel concerning the matter set forth in the motion or request. This statement shall recite in addition, the date, time and place of this effort to reach agreement, whether in person or by telephone and the names of all parties and attorneys participation therein. If an attorney for any party advises the court in writing that an opposing attorney has refused or delayed meeting and discussing the issue of witness address disclosure, the court may take such action as in appropriate. The court may deny a discovery motion filed by a party who has failed to comply with the requirements of this subsection.
  - (3) Any books, papers, documents, photographs, or tangible objects he/she intends to use as evidence.
  - (4) Medical, scientific, or expert witness evaluations, statements, reports, or testimony that may be used at a hearing or trial.

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<sup>5</sup> Rule 7(3)a amended May 25, 1999.

- (b) After the formal charge has been filed, upon written motion by the State, the Court may require the accused, among other things, to:
- (1) Appear in a line-up.
  - (2) Speak for identification by witnesses to an offense.
  - (3) Be fingerprinted.
  - (4) Pose for photographs not involving re-enactment of a scene.
  - (5) Try on articles of clothing.
  - (6) Allow the taking of specimens of material from under his/her fingernails.
  - (7) Allow the taking of samples of his/her blood, hair, and other materials of his/her body that involve no unreasonable intrusion.
  - (8) Provide a sample of his/her handwriting.
  - (9) Submit to a reasonable physical or medical inspection of he/her body.

Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his/her counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his/her release.

#### **4. ADDITIONS, LIMITATIONS, AND PROTECTIVE ORDER.**

- (a) *Discretionary Disclosures.* Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court, in its discretion, may require disclosure to defense counsel of relevant material and information not covered by this Rule.
- (b) *Denial of Disclosure.* The court may deny disclosure authorized by this Rule if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure to counsel.
- (c) *Matters Not Subject to Disclosure.*
- (1) Work product. Disclosure hereunder shall not be required of legal research or records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or

members of its legal or investigative staffs, or of defense counsel or his/her staff.

- (2) Informants. Disclosure of an informant's identity shall not be required where there is a paramount interest in non-disclosure and a failure to disclose will not infringe the Constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

- (d) Either side may apply for a protective order for non-disclosure of requested discovery.

## **RULE 8. BAIL<sup>6</sup>**

Bail in criminal cases shall be set according to the Marion Superior Court Bail Matrix, as amended, and contained in Appendix A and B. Modification of bail set under the Matrix can occur only through the judge assigned to the case or the judicial officer assigned to the initial hearing court.

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<sup>6</sup> Rule 8 amended June 23, 2000.

## **RULE 9. CONTINUANCES**

- (a) Felonies/misdemeanors: If a party desires to continue a setting in a felony or misdemeanor case, trial or otherwise, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. The motion shall also include the type of hearing, opposing counsel's position, and suggested dates for the court. Such motion shall be filed at least five (5) days (excluding Saturdays, Sundays and court holidays) before the setting that the party desires the court to continue unless the time has been modified by the judge presiding over the cause. A written order with sufficient copies for all parties shall accompany the motion. Until such motion is granted by the court, it shall be deemed denied.
- (b) Infractions/ordinance violations: If a party desires to continue a setting in a case involving only infractions and/or ordinance violations, the party shall file a verified written motion stating in detail the reasons why the setting needs to be continued. Such motion shall be filed at least ten (10) days (excluding Saturdays, Sundays, and court holidays) prior to the setting that the party desires the court to continue.

## **RULE 10. REQUEST FOR GUILTY PLEA HEARING**

The court will set a guilty plea hearing only after an oral request on the record or a written pleading, i.e., a petition to enter plea of guilty or a plea agreement is filed.

## **RULE 11. SERVICE - LAW ENFORCEMENT**

Service of a subpoena may be made upon a law enforcement officer, by delivering the subpoena to the officer's place of employment. A copy of the subpoena shall be left with the official in charge of the department. It shall be the duty of the official to immediately deliver the subpoena to the officer being served. Service in this manner shall be deemed service on the officer.

## **RULE 12.<sup>7</sup> MANDATORY CONSECUTIVE SENTENCES**

Where consecutive sentencing is mandated under Indiana Code 35-50-1-2(d), the sentence calling for more restrictive placement shall be served prior to any sentence for less restrictive placement. For purpose of this rule, the following placements are listed in order from most restrictive to least restrictive:

1. Incarceration at the Indiana Department of Corrections
2. Incarceration at the Marion County Jail

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<sup>7</sup> Rule 12 adopted July 27, 1999.

3. Incarceration at the Correctional Component (Jail Annex) of Marion County Community Corrections
4. Commitment to a Work Release Facility (VOA or Riverside)
5. Commitment to Home Detention with Electronic Monitoring
6. Commitment to Day Reporting

If the sentence calling for more restrictive sentencing is entered after the sentence for less restrictive sentencing, the Judge ordering less restrictive placement shall issue an amended abstract ordering such sentence to be served consecutive to the more restrictive placement. The amended abstract shall be issued no more than 10 days following notice that a more restrictive sentence has been entered.

Where terms of probation are mandated to run consecutively under Indiana Code 35-40-1-2(d), the term calling for the least restrictive conditions shall run consecutive to the term(s) calling for more restrictive conditions. The Marion Superior Probation Department shall make the determination as to which term of probation is most restrictive, and as to which term shall be served first.

The Chair of the Criminal Division is authorized to issue any orders necessary to enforce the provisions of this rule.

## **RULE 13<sup>8</sup> TRANSFER OF PRISONERS TO THE INDIANA DEPARTMENT OF CORRECTIONS**

Unless otherwise ordered by the Court, any defendant sentenced for a felony offense, including Class D Felonies, shall be sentenced to the Indiana Department of Corrections.

In cases where a defendant has been sentenced to the Indiana Department of Corrections and has another case pending in Marion County, the Marion County Sheriff may not transfer the defendant to the Department of Corrections without first providing seven days notice to the Court with jurisdiction over the pending case. Either party may petition the Court to have a defendant or prisoner held in the Marion County Jail. The Court shall promptly notify counsel in the pending case of the defendant's proposed transfer to the Department of Corrections. After seven days, the defendant shall be transferred to the Department of Corrections unless the Court issues an Order for good cause shown to hold the defendant in the Marion county jail. The Marion County Sheriff's Department shall then notify the Court with jurisdiction over the defendant's pending case, that the defendant has been transferred to the Indiana Department of Corrections. Notification under this rule should be by facsimile or electronic mail.

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<sup>8</sup> Rule 13 adopted April 2, 2001; effective April 2, 2001

## **RULE 14<sup>9</sup> CASE DISPOSITION GUIDELINES**

Unless there is good cause shown, all criminal matters with a jailed defendant shall be tried, plead or dismissed as follows:

1. All misdemeanors within 45 days of initial hearing.
2. All class D felonies within 90 days of initial hearing.
3. All class C felonies within 120 days of initial hearing.
4. All class A and B felonies within 180 days of initial hearing.
5. Murder cases within 365 days of initial hearing.

The attached Criminal Division Rules were approved by the Judges of the Marion Superior Court meeting in a General Division Meeting on April 8, 1996, and made effective that date.

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<sup>9</sup> Rule 14 adopted July 23, 2002; effective July 23, 2002